BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter Of	*)*	
	)	*CG Docket No. 02-278*
Rules and Regulations Implementing the	*)*	
Telephone Consumer Protection Act of 1991	*)*	
	)	

COMMENTS OF INTERACTIVE TELESERVICES CORPORATION ON THE RULES AND REGULATIONS IMPLEMENTING THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

INTRODUCTION

1. Interactive Teleservices Corporation ("ITC") is a service bureau providing teleservices on an outsourced basis to Fortune 500 companies, primarily in the banking and insurance fields. Our company is based in Columbus, Ohio and operates telemarketing centers in Ohio (3), Nebraska (1), Wyoming (1) and Kentucky (1). We currently employ over 1,600 people, many of whom are single mothers, members of minority groups and former welfare recipients. We had plans to employ over 500 additional people in this country, however these plan have been suspended with the passage of the new Federal Trade Commission ("FTC") rules regulating this already heavily-regulated industry. Our call centers are generally located in high unemployment areas. We create good jobs quickly, with little drain on a community's infrastructure and resources and, therefore, are a sought-after employer in these high unemployment areas. This desirability is reflected in State economic development incentives received from the States of Ohio, Wyoming and Kentucky.

2. The products and services our company markets for our clients tend to be directed to low to moderate income people and small businesses. We make low-cost products and services available by telephone to people and businesses whose needs involve products that are not high priced enough and/or high volume enough to justify more costly sales efforts such as person-to-person

direct sales and media advertising. These products and services include low-cost life and health and property and casualty insurance, access to credit for people who are not wealthy enough or do not have credit ratings high enough to otherwise obtain credit, business products for small businesses that are not big enough to be the target of high cost marketing from suppliers, etc., and are bought in large quantities by customers over the telephone because they find the products and services useful and/or helpful, they enjoy the convenience and cost-effectiveness of telephone purchases and they may not have known of the existence of the product or service had they not received the telemarketing call.

3. We are writing to offer our comments concerning the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.

4. ITC is a highly professional, ethical organization. We welcome and encourage reasonable regulation that will help eliminate abuses in our industry. In that regard, we want to acknowledge the FCC's' continuing and very important work on behalf of consumers in promulgating, reviewing and enforcing rules implementing the TCPA and in striking an equitable balance between the interests of preventing deceptive and abusive telemarketing and not unduly burdening legitimate businesses.

5. ITC fears, however, the very substantial and sometimes unintended negative consequences of <u>over-regulation</u>, no matter how well-meaning the original intent. These consequences can destroy the economics of an industry, cost millions of jobs and result in increased prices to consumers. <u>Therefore, we do not support the FTC's recent revisions to the Telemarketing Sales Rule ("TSR") which were promulgated without analysis of the economic impact and without balancing the need not to unduly burden legitimate businesses.</u>

6. The FCC must not rubber stamp the FTC's) Amended TSR, adopted without a meaningful economic cost-benefit analysis of its effect on jobs, the economy and the budget deficit, is overbroad, ill-conceived and unnecessarily damaging to an industry that provides millions of good, clean, well-paying jobs to a segment of the population that otherwise does not have sufficient job opportunities available.

7. We recognize that it is easy to malign telemarketing and complain about the annoyance of receiving telephone calls at home. However, the number of calls has increased simply because of the cost-effectiveness of this method of bringing products and services to customers. If people did not want to buy over the telephone, the industry would not exist. The fact is that the demand is there and is growing and we are satisfying the demand.

8. For every story about the petty annoyance of an unwanted call (and, remember, you can always just say no), there is a story like the man and woman, both working, with three children, who are barely able to pay their bills, whose bank

alerts them by a telemarketing call to the availability of affordable disability insurance with premiums of a few dollars a month paid through their credit card. They would never know this insurance existed without the call because this is the primary cost-effective way to market these low cost products to low income people, and it is because of the call they buy it. If the husband or wife is in an auto accident the next day and cannot work for six months, the insurance kicks in and instead of a family financially humiliated, in bankruptcy and on the public dole, we have a family that proudly gets through this difficult time with the help of the insurance they purchased as the result of a telemarketing call.

<u>OVERVIEW</u>

- **Congress has not required, not is it permitted to require, the FCC to blindly rubber-stamp the FTC regulations.**

- **The FTC has not conducted a meaningful analysis of the economic impact and overall cost versus benefit of their regulations.**

- **The FTC is trying to trump the FCC's jurisdiction of this matter by its carefully planned publicity campaign and a regulatory process the outcome of which it had predetermined.**

    - The FTC's claim of overwhelming positive public comment on its proposal from consumers is based on its own flawed and biased solicitation of comments.

- **The FTC's rush to regulate comes at the wrong time:**

    - The nation's economy is struggling to get out of recession;
    - Job losses have been high and are continuing;
    - Unemployment is excessive and is getting worse; and
    - The federal budget deficit is soaring.

- **The FTC's Amended TSR will eliminate hundreds of thousands, perhaps millions of jobs** in all parts of the nation. This job loss will start in the teleservices industry, but will spread to other industries that produce and deliver the products and services that are sold using teleservices.

    This will be a repeat of the recent the airline industry job loss disaster, <u>except</u>:

    - The number of jobs lost will be greater; and
    - It won't be foreign terrorists and SARS that caused the loss, but our own Federal Regulators

- **Jobs that remain in the teleservices industry will move offshore because cheaper labor is necessary to offset the higher costs and lower efficiency imposed on the industry by these regulations.**

    - The <u>FREE, OVERLY-BROAD, UNIVERSALLY APPLICABLE</u> Do-Not Call Registry will eliminate a segment of the population which currently buys over the telephone.

    - 5% is a reasonably achievable abandonment rate – each percentage point below that reduces the efficiency of current technology and sends hundreds of thousands of jobs to cheap labor offshore.

    - Other onerous technology requirements make labor-saving devices no longer labor-saving and require the purchase of additional technology, thereby encouraging companies to seek cheaper labor overseas.

- **The Regulations will increase the cost of many goods and services** because telephone marketing is an extremely cost-effective marketing channel.

- **The Regulations will eliminate or drastically reduce the availability of certain low-priced goods and services** for which telephone marketing is the only cost-effective means of getting to market.

- **The Regulations will stifle innovation and the introduction of new goods to the market by eliminating a cost-effective consumer sales, marketing and testing channel.**

- **The FCC should make its own decision, *de novo,* and not feel bound to follow the FTC.** The FTC has exceeded its statutory authority to regulate fraudulent, deceptive and abusive practices in telemarketing.

- **The FTC's rules are subject to attack on statutory and constitutional grounds, but the damage will be done before a court has the opportunity decide these issues.**

- **The FTC's Regulations will not protect consumers** from the dishonest, unprofessional, sleazy telemarketers that cause most of the problems – they don't follow current regulations. Only the law-abiding firms will be hurt.

- **There is no need for the FTC's Regulations**; aggressive enforcement of laws and regulations already on the books and, if necessary, less Draconian adjustment to those laws and regulations will be far more effective.

- **In the end, people have the right and the power to say no to telemarketers, to hang up on them, or to purchase products designed to block their calls – the Federal Government and its regulators are going too far.**

CONGRESS HAS NOT REQUIRED, NOT IS IT PERMITTED TO REQUIRE, THE FCC TO BLINDLY RUBBER-STAMP THE FTC REGULATIONS

- Congress clearly asked the FCC to consider regulations “consistent” with rather than “the same as” or “identical to” the FTC regulations.

- Congress is prohibited from pre-determining the outcome of a rule-making procedure at the FCC.

- The FCC has a long history of overseeing and regulating this industry, which it has done in an even-handed and responsible manner, and its expertise and experience cannot and should not be ignored.

THE ECONOMIC IMPACT AND COST VERSUS BENEFIT OF THESE REGULATIONS HAS NOT BEEN THOROUGHLY AND PROPERLY ANALYZED

- **Our economy is in recession**, new lay-offs are announced every day, unemployment is high and increasing, our federal budget deficit is soaring, our welfare rolls bulge, a war on terrorism must be funded, the war in Iraq must be paid for and that country rebuilt, yet a burdensome regulation on an already heavily-regulated industry that, without question, employs millions in this country has been pushed through by the FTC without even an analysis of the economic impact its regulations on jobs, the economy and the country. The FCC must be the voice of reason in this process.

- **Congressmen requested this analysis, but the FTC ignored the request.**

- **In addition, it is the clear policy of the current Administration to require a full economic cost-benefit analysis of all regulations.**

- **Decisions are made in other industries based on a reasoned analysis of the cost of regulations to the economy, jobs, etc. Such an analysis was not conducted here.** Health concerns, safety issues, etc. are balanced against the job loss that regulation would create. It affects the air we breathe, the water we drink, the food we eat and the place where we work.

- Here we are not talking about regulating poisons or pollution, but **SPEECH**. <u>**Study and analyze the harm these regulations will cause versus the benefits to be obtained BEFORE the harm is done.**</u>

IN THEIR CURRENT FORM, THE FTC REGULATIONS WILL:

1. **ELIMINATE HUNDREDS OF THOUSANDS, PERHAPS MILLIONS OF JOBS IN ALL PARTS OF THE NATION**
2. **CAUSE THE EXODUS OFFSHORE TO CHEAP LABOR MARKETS OF TELESERVICES JOBS**
3. **HURT OUR ALREADY AILING ECONOMY**
4. **INCREASE OUR WELFARE ROLLS**
5. **INCREASE THE COST OF GOODS AND SERVICES**
6. **DECREASE THE AVAILABILITY OF LOW COST GOODS AND SERVICES**
7. **COST THE FEDERAL GOVERNMENT BILLIONS OF DOLLARS**

- **Consumer outbound telephone marketing contributes significantly to our economy.** In 2001, it accounted for:
  - **4.1 million people employed**
  - **$274 Billion in sales**
  - **27% of all consumer direct marketing**
  - **4% of all U.S. consumer sales result from outbound dialing**
- **The FTC's new regulations will cause drastic job loss** in this industry – job loss estimated in the many hundreds of thousands and perhaps millions.
- **Many of the jobs available in the teleservices industry are suitable for workers who have difficulty finding employment in other industries.** Thus, even if other jobs were available (which they are not in today's economy), these newly unemployed would have a high likelihood of remaining unemployed and ending up on welfare rolls.
- **Even jobs that are not totally lost will likely move in large numbers to offshore** providers who have already captured a part of the telephone marketing market. As regulation increases the cost of doing business, low cost foreign labor will, of necessity, replace domestic employees.
- **This result is devastating to current efforts to move people from welfare to work** and increase the time certain people on assistance work. In

addition, it will put additional burden on the already deficit-laden federal and state budgets.

- **Beyond the individuals specifically employed in this industry, the enormous contribution of this industry to overall sales volume in this country is such that the effect of these regulations will reverberate far beyond the industry to related industries that manufacture, supply, deliver, service, support, etc. the $274 billion in goods and services that are sold annually by outbound telephone marketing.**

- **Decline in sales will also decrease revenue for federal state and local governments** from payroll taxes, sales taxes and corporate income taxes **while, at the same time, increasing the governments' cost of assisting the unemployed**.

THE ACTUAL BENEFIT TO BE DERIVED FROM THE NEW REGULATIONS IS MINIMAL (which would become apparent if the required cost-benefit analysis were to be done).

- **There is no need for more regulation; aggressive enforcement of laws and regulations already on the books and less Draconian adjustment of those laws and regulations, if necessary, would be far more effective.** This is an already heavily regulated industry, both by the federal government and the States.

- **The Do-Not-Call Registry will not protect consumers from the dishonest, unprofessional, sleazy telemarketers that cause most of the problems – they don't follow current regulations. Only the law-abiding firms will be hurt.** There has been no analysis by the FTC of who is causing problems today, but the answer is obvious. The bulk of the problems are caused by the "bad guys" who do not follow the laws and regulations in place today. They won't follow the new ones either, but the reputable, law-abiding firms and their employees will pay the price. These complaints will continue despite the new regulations. However, the law-abiding firms will be out of business.

    - The FCC should reaffirm its prior analysis that company-specific do-not-call lists are the appropriate response and properly weigh consumer protection with free speech and a vital economy. These lists should form the basis of reasoned further activity in this arena if necessary to deal with fraud and abuse.
    - The FTC's decision to make the Registry free to the public and to make subscription easy (internet, toll-free number, etc.) and without requirement of proof of identity, will lead to over-subscription, fraud, abuse, misuse and error.
    - If a national registry were to be put into place, which we do not feel is necessary, the minimum requirements should be a small fee from the subscriber (to reduce fraud, overuse, error and to make this self-funding), some minimal proof of identity and a mechanism to keep the list clean in light of the mobility of our population.
    - The National Registry, as conceived by the FTC regulations, will limit the exposure of new, more effective, lower cost products and services to consumers, and of consumers to such products and services.

- **The 3% abandonment rate dictated by the FTC is unreasonably low, renders inefficient the technology on which this industry has spent billions of dollars and therefore unnecessarily increases costs.** The 5% rate requested by the industry and currently the standard of the industry's internal code of ethics, is sufficient to protect consumers without destroying the efficiency of the industry. Increasing costs by imposing an arbitrary and unreasonable abandonment rate will cause the industry to move jobs offshore where these costs can be offset by cheap labor.

- **The FTC's ill-conceived, overbroad regulations are already adversely affecting consumers.** For example, the restriction on "free-to-pay" offers, has hurt, not helped, consumers.

    - In an attempt to attack fraud in free-to-pay offers, the FTC required all calls containing such offers to be recorded in their entirety. Given the computer memory required to record and store such huge volumes of voice files, this recording requirement was prohibitively expensive, if not technologically impossible, to follow. The result is that free trails have been virtually eliminated in telephone sales. What used to be offered free for a 30, 60 or 90 day trial period now is no longer offered free. How is this benefiting the consumer? The FTC over-regulated and thereby eliminated, rather than improve, a marketing approach that benefits consumers.

- **The FTC requires telephone marketers to let the phone ring for a minimum of 15 seconds or 4 rings before disconnecting. If the annoyance is a ringing telephone, is requiring it to ring longer really the solution?**

- **The FTC requires the playing of pre-recorded messages on calls that would otherwise be disconnected. This flies in the face of previous experience that consumers find pre-recorded messages objectionable. The judgment is made, without factual support, that a pre-recorded message is preferable to a disconnect. Much evidence indicates otherwise, but we do not know the true answer because no one has bothered to find out.**

- **Regulators are supposed to be preventing "fraud" and "abuse". It is not the regulators mission, not should it be, to regulate every one of life's possible annoyances.** One person's annoyance can be another one's pleasure.

- **In the end, people have the right and the power to say no to telemarketers, to hang up on them, or to purchase products designed to block their calls – the Federal Government and its regulators are going too far.**

THE FTC'S ITS CLAIM OF OVERWHELMING POSITIVE PUBLIC COMMENT ON ITS PROPOSAL IS BASED ON ITS FLAWED AND BIASED SOLICITATION OF COMMENT.

The FTC proudly and constantly points to the comments received from consumers in support of the new regulations. However, the manner in which the FTC solicited consumer comment renders the results meaningless.

- The FTC preceded its solicitation of comments with a one-sided publicity campaign in favor of the results it wanted.
- The FTC simply asked, through the media, its website, etc. a question akin to "who likes telemarketers and who would like to be able to be put on a list so they would not be called by them". **None of the negative consequences of the regulations were mentioned** – not the jobs to be lost, the increase in unemployment and welfare rolls, the damage to the economy, the decrease in availability of goods and services, the cost to the government, etc. (not to mention the potential for impinging on free speech).
- **Opinions were solicited in a manner that pre-determined the result.** This is like asking:
    - "Would you be in favor of a list that you could put your name on, without charge, that would prohibit the transmission of TV commercials to your house?"
    - "Do you enjoy visiting the dentist? Would you like never to have to go to the dentist again?"
    - "Do you like paying taxes? Would you like the IRS to create a list of people who, without any consequences, do not have to pay taxes? Would you put your name on the list?"
    - "Should we reduce the budget deficit by requiring all politicians to take a 10% cut in pay?"
- The answers to these questions are obvious. It is equally obvious that **the FTC solicited comment in a manner that pre-determined the outcome and made the conclusion inevitable. It is simply not a reasonable or accurate sampling of opinion.**
- Imagine the different answer that would be forthcoming if the FTC asked the following question:

    "We are soliciting opinion on the desirability of a National Do Not Call Registry. Putting your name on the registry will not protect you from unscrupulous businesses calling you – it will only stop the legitimate ones. It will lessen the number of low cost products and services that will be available to you and will cause prices to increase. It will cost millions of dollars to set up and administer, will put hundreds of thousands of people out of work, will drive jobs offshore, will increase our welfare rolls, our already suffering economy will get worse, and the federal and state budget deficits will increase. It also restricts free speech.

By the way, the same results could be achieved without all these horrible consequences. All you have to do is simply tell telephone marketers if they call that you are not interested in what they are selling."

THE REGISTRY AND THE FTC'S RULEMAKING RELATED TO IT ARE SUBJECT TO ATTACK ON STATUTORY AND CONSTITUTIONAL GROUNDS, BUT THE DAMAGE WILL BE DONE BEFORE A COURT HAS THE OPPORTUNITY DECIDE THESE ISSUES.

Once the Registry and other regulations are put in place, the harm will be done and will be irrevocable to the people put out of work and the firms put out of business. Court challenges will be mounted, but the harm will already be done and irreversible. Among the bases for these challenges are:

- **The FTC's actions exceed its Congressional mandate.** It was empowered only to prohibit fraudulent or deceptive telemarketing practices. While some may view telemarketing as an annoyance, it is a lawful business practice that 180,000,000 Americans used last year to make purchases. The FTC cannot rewrite legislation; the Congressional Record repeatedly states that the legislation is not directed at the legitimate telemarketing industry.

- **The new regulations unconstitutionally restrict commercial free speech.** Supreme Court precedents have established a test for government attempts to restrict commercial free speech. A substantial government interest must be proven and the proposed remedy must be narrowly tailored to the specific issue. The burden of proof rests with the government, not business. The FTC has failed to demonstrate a substantial government interest through factual data of any type, while ignoring the consequences to jobs and the economy. Nor have they explained why other methods of dealing with these issues that do not involve the federal government in restricting free speech are not satisfactory.

- **The new regulations add another layer of bureaucracy to an already over-regulated industry.** A federal company-specific do-not-call law has been in effect since 1991. More than twenty-two states have already enacted their own do-not-call laws. The private sector has operated a national do-not-call registry since the mid-eighties. The proposed federal registry supersedes none of these existing programs. It simply adds another burden to business, duplicating existing laws. OMB estimates the regulatory burden on the American family at \$6,000 to \$8,000 per household; this will add to that burden with no benefit to the consumer.

We appreciate the time the Commission has invested in studying these issues and its commitment to continue modifying these proposals. We urge the Commission to look at the overall negative impact that these proposals will have on jobs, our community and the economy as a whole. Thank you for your consideration and we would be happy to assist the Commission in the future.

Dated: May 5, 2003

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